

DECISION

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (Application) under the *Residential Tenancy Act* (the Act) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice);
- cancellation of the One Month Notice to End Tenancy for Cause (One Month Notice);
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and
- recovery of the filing fee for this Application from the landlord.

This hearing also dealt with the landlord's Application under the Act for:

- possession of the rental unit based on the 10 Day Notice;
- recovery of the unpaid rent and utility amounts set out in the 10 Day Notice; and
- recovery of the filing fee from the tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The landlord's lawyer denied receipt of the tenants' Proceeding Package by the landlord. While they acknowledged receipt of a registered mail package on February 28, 2025, they stated that it contained only random documents, such as a proof of service form, a screen shot of a google search, a picture of a dryer, and a picture of a BC Hydro bill, and no copy of the tenants' Application or the Proceeding Package. Further to this, the lawyer stated that the landlord only found out about the tenants' Application when they filed their own Application, as it was originally filed as a direct request on what they believed to be an uncontested 10 Day Notice.

The tenants stated that to their knowledge, they served everything required, however, they seemed confused about when and how they received the Proceeding Package from the Residential Tenancy Branch (Branch). They also could not point to any documentary or other evidence before me to corroborate that the Proceeding Package was served or that it formed part of the registered mail package received by the landlord on February 28, 2025.

As a result of the above, I dismissed the tenants' Application, in its entirety, for lack of service, pursuant to rule 3.5 of the Residential Tenancy Branch Rules of Procedure

(Rules). I did not consider it appropriate to adjourn for the purpose of allowing the tenants time to affect service, as the claims by both parties in their Applications related to notices to end tenancy and unpaid rent. The tenants also did not request an adjournment for this purpose. Their claims for recovery of the filing fee and cancellation of the notices to end tenancy are dismissed without leave to reapply, as the timelines for disputing the notices have now passed. The remaining claims are dismissed with leave to reapply.

The landlord's lawyer stated that registered mail containing the landlord's Proceeding Package was sent to the tenants at the rental unit on February 26, 2025, as well as posted to the door of the rental unit on February 26, 2025. The tenants confirmed receipt of the package off their door. I therefore found the tenants sufficiently served with the landlord's Proceeding Package for the purpose of the Act and Rules and therefore accepted it for consideration.

Service of Evidence

The tenants acknowledged receipt of the documentary evidence before me from the landlord. As a result, I have accepted it for consideration. However, the parties disagreed about what evidence was received by the landlord from the tenants. The tenants stated that all their evidence was sent as part of the registered mail package received by the landlord on February 28, 2025. As the tenants provided nothing to corroborate what evidence formed part of this package, I have therefore only accepted for consideration the specific documents the landlord's lawyer, spouse, and agent confirmed were received.

Preliminary Matters

Although the parties agreed that both a 10 Day Notice and a One Month Notice had been served, a copy of the One Month Notice was not provided for my consideration by either the landlord or the tenants. As a result, I have not granted or considered granting the landlord an order of possession under section 55(1) of the Act in relation to it, as I cannot verify if it complies with section 52 of the Act. Further to this, the landlord's lawyer specifically stated that the landlord is not seeking enforcement of the One Month Notice as part of their Application.

Issues to be Decided

Is the landlord entitled to an Order of Possession for the rental unit?

Is the landlord entitled to recover unpaid rent or utilities?

Is the landlord entitled to recover their filing fee from the tenants?

Background and Evidence

The landlord's lawyer stated that the tenant failed to pay the full \$2,500.00 in rent owed in both November and December of 2024, with \$350.00 being owed for November of 2024 and \$210.00 being owed for December of 2024. As a result, they stated that the landlord served the tenants with the 10 Day Notice. The 10 Day Notice before me is on the Branch form, is signed and dated February 11, 2025, has an effective date of February 24, 2025, and states that \$560.00 in outstanding rent is owed as of December 1, 2024.

The lawyer stated that the 10 Day Notice was posted to the door of the rental unit on February 11, 2024, and at the hearing, the tenants acknowledged receipt the following day on February 12, 2024. The tenants also acknowledged failing to pay the amounts owed as they were in-between jobs. However, they stated that they offered to pay it within 5 days after the 10 Day Notice was received, and their offer was declined. The lawyer, the landlord's spouse, and the agent denied that any such offer was made or declined.

Analysis

Is the landlord entitled to an Order of Possession for the rental unit?

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

As no evidence or testimony was presented that the tenants had a lawful right under the Act to deduct or withhold the rent, I find that they did not. As a result, I find that they were required to pay the full \$2,500.00 in rent each month as set out in the tenancy agreement. I am also satisfied that they failed to do so in both November and December of 2024, resulting in an outstanding balance of \$560.00.

The tenants acknowledged receipt of the 10 Day Notice on February 12, 2024. They also acknowledged that the outstanding amount owed of \$560.00 was never paid. Although they stated that they attempted to pay the amount owed within 5 days of receipt of the 10 Day Notice, they submitted nothing to corroborate this claim, which the lawyer, agent, and the landlord's spouse all denied. Given the lack of evidence to corroborate this claim, and the denial that any such attempt to pay the rent occurred or was denied, I do not accept that the tenants offered to pay the rent owed, or that any such offer was denied.

Based on the above, I therefore find that the 10 Day Notice is valid, as the tenants failed to pay the rent owed within the 5-day time limit set out under section 46(4) of the Act, and did not have a lawful reason to withhold or deduct this rent under the Act. As I am satisfied that the 10 Day Notice complies with section 52 of the Act, the landlord is

entitled to an Order of Possession. As the effective date of the 10 Day Notice has passed, and I do not know if further rent is now owed since the date of the hearing, I therefore grant the Order of Possession effective seven (7) days after service on the tenants.

Is the landlord entitled to recover unpaid rent or utilities?

As set out above, I am satisfied that the tenants owe \$2,500.00 in rent each month, and that they have failed to pay \$560.00 in rent owed as set out below:

- \$350.00 in November of 2024; and
- \$210.00 in December of 2024.

I have also already found that they had no lawful reason under the Act to deduct or withhold this rent. As a result, I grant the landlord recovery of this outstanding amount.

Is the landlord entitled to recover their filing fee from the tenants?

Recovery of the filing fee is at my discretion. As the landlord was successful in their claims, I therefore grant them recovery of the \$100.00 filing fee from the tenants under section 72(1) of the Act.

Conclusion

The tenants' Application is dismissed in its entirety, for lack of service on the landlords. Their claims for recovery of the filing fee and cancellation of the 10 Day Notice and One Month Notice are dismissed without leave to reapply. Their other claims are dismissed with leave to reapply.

Pursuant to sections 46 and 55 of the Act, I grant the landlord an Order of Possession effective seven (7) days after service on the tenants. The landlord is provided with this Order and the tenants must be served with a copy of this Order by the landlord as soon as possible. If the tenants fail to comply with this Order after it has been served, it may be enforced in the Supreme Court of British Columbia.

Pursuant to sections 26, 67, and 72 of the Act, I grant the landlord a Monetary Order in the amount of \$660.00. The landlord is provided with this Order and the tenants must be served with a copy of this Order by the landlord as soon as possible. Should the tenants fail to comply with this Order after it is served, It may be enforced in the Provincial Court of British Columbia (Small claims court) as it is equal to or less than \$35,000.00.

In lieu of serving and enforcing the Monetary Order, the landlord may withhold the \$660.00 owed from the \$1,305.57 security deposit and interest currently held in trust by the landlord. The remaining balance of that deposit, plus any additional interest owed, would then need to be dealt with by the landlord in accordance with the Act.

Pursuant to section 57(2) of the Act, a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

Pursuant to sections 57(3) of the Act, a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended, or for any loss suffered by a new tenant if their occupancy of the rental unit is prevented or delayed due to the overholding.

I believe that this decision has been rendered within 30 days after the close of the proceedings, in accordance with section 77(1)(d) of the Act and the *Interpretation Act* with regards to the calculation of time. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if it is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected if I have erred in my calculation of time and this decision and the associated Order were issued more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under section 9.1(1) of the Act.

Dated: April 24, 2025

Residential Tenancy Branch